

REMARKS

Claims 9-15 and 17 are pending the application; Claims 9-15 and 17 stand rejected. By this Amendment Claim 17 has been amended and new claims 19-29 have been added. These amendments and new claims add no new matter to the application.

New claim set 19-24 corresponds to claims 10-15, except that they are dependent from Claim 17; new claim set 26-29 corresponds to claims 10-13, except that they are dependent from Claim 25.

Applicant hereby incorporates by reference as if fully set forth herein, the arguments it has already advanced in earlier responses to rejections made by the Examiner under these same cited references. Claims 9-15 and 17 are rejected under 35 USC 102 as allegedly anticipated by either or both of the Kuznicky or Mitsui Norin references. The Examiner persistently has refused to credit our previous arguments. We again respectfully traverse these rejections, with additional remarks directed to the Examiner's latest remarks, which we think will clarify the matter and lead to allowance or to a definition of allowable subject matter on the next action.

As to the Examiner's remarks on page 3 of his action, and elsewhere, to the effect that the cited reference disclose a composition, and the claims claim a composition, and there is nothing further to discuss, Applicant here respectfully submits the following. First, it is an oversimplification of the art analysis to suggest that a disclosed composition always necessary anticipates an identical claimed composition. The law is just plainly not so (see extensive briefing in a previous response). Whether we are talking about anticipation by inherency, or by some other means, there are many recognized cases, as discussed, where the previous disclosure of a composition for an use unrelated to a use now claimed for an 'identical' composition is not anticipatory, either inherently or otherwise. What the Examiner is consistently ignoring is the

claim element “the therapeutic amount of the catechin selected for efficacy in treating amyloid, alpha-synuclein or NAC fibrillogenesis in a mammalian subject.” Thus it is not just any composition containing a catechin that is being claimed but only compositions in which the therapeutic amount of the catechin has been selected for efficacy in treating amyloid, alpha-synuclein or NAC fibrillogenesis in a mammalian subject. As to this qualification, all cited references are completely silent, and therefor NOT anticipatory. Reconsideration for the rejected claims is therefore requested, along with early favorable action on them. Applicant accepts the Examiner’s invitation to a rhetorical inquiry involving a substitution, for purposes of illustration and discussion only of course, of the word aspirin into the rejected claims; Applicant submits however, that the Examiner’s own substitution requires an impermissible short cut in the analysis. In fact, even if we substitute aspirin in place of catechin, in the composition, we are still left with aspirin used for one thing not anticipating aspirin used for something else unrelated to the first use.

With respect to Claim 17 and its dependents, and now Claim 25 and its dependents, wherein the term of art “consisting of” has been applied to the composition claimed, Applicant now submits that with the removal of the pharmaceutical carrier ingredient as an element of the claim, the Examiner’s standing argument that fruit juice etc may be considered a carrier etc is now moot. Claim 17 and 25 now cover all compositions that contain only a therapeutically effective amount of a catechin, wherever the therapeutic amount of the catechin is selected for efficacy in treating amyloid, alpha-synuclein or NAC fibrillogenesis in a mammalian subject. Applicant expressly does not hereby acquiesce to any argument that adding such an excipient or carrier, as commonly known to those skilled in the art would in any way take a composition outside of the ambit of the claims, as any such addition would be non-essential to the efficacy of the composition. This is especially the case for alternate claim 25 which is in all ways the same as claim 17 except

for the use of the term of art “consisting essentially of”. Applicant asserts this ‘essential’ term is already an implied part of any “consisting of” claim expression, but adds claim 25 as a precaution, not as admission against interest. As the cited references all contain ingredients other than catechins, as well as the other reasons advanced previously and in this response for the other pending claims, at the least, Claims 17-29 are distinguished over the art of record and are in condition for allowance. Reconsideration and early favorable action is therefore requested.

Applicant believes that it has responded fully to all of the concerns expressed by the Examiner in the Final Action, and respectfully requests entry of the new claims that early favorable action be taken on all claims pending in the application. Applicant respectfully requests reexamination of all rejected claims and early favorable action on them as well. If the Examiner has any further concerns, Applicant requests a call to Patrick Dwyer at (206) 343-7074.

Respectfully submitted,



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